IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 230 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

HAYAT DAUD DAFER

Appearance:

MR BY MANKAND, APP for Petitioner No. 1

Respondent No. 1 served

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 25/09/2001

ORAL JUDGEMENT

1. This Revision Application is filed against the order passed by the learned Judicial Magistrate, First Class, Petlad, on 9th of March, 1999, in Criminal Case No. 1631 of 1996, rejecting the application filed by the State to commit the case against the present respondent to the Court of Sessions on the ground that the offence

which is disclosed is punishable under Sections 397 and 398 of the Indian Penal Code.

2. Against the present respondent and other accused, a crime before Petlad (Rural) Police Station was registered vide Crime Register No. I-158/1993 under Sections 394 read with Section 34 of the Indian Penal Code. A charge sheet came to be filed against the accused being Criminal Case No.2382 of 1995 and the said criminal case against the accused except present respondent was resulted in acquittal. The present respondent in the said charge sheet in Crime Case No.2382 of 1995 being accused was shown as absconded and on his being arrested by the Police, supplementary charge sheet was preferred before the Court of learned JMFC, Petlad, which was registered as Criminal Case No. 1631 of 1996. In the said case, an application by the State came to be filed that the offence which is revealed against the present respondent was of Sections 397 and 398 of the Indian Penal Code and, therefore, the case be committed to the Court of Sessions. Learned Magistrate turned down the request of the State on the ground that on perusing the papers, he could not find any evidence, which disclosed the committal of the case for the offences under Sections 397 and 398 of the Indian Penal Code and that trial against other accused was resulted in acquittal. Being aggrieved by the said order, present Revision Application is preferred by the State.

3. Learned APP Mr. B.Y. Mankad was heard at length. The Investigating Officer is present. The papers were taken into consideration. Though the respondent is served has not appeared.

4. After hearing learned APP and perusing the papers, suffice it to say that the learned Magistrate did not commit any error in coming to the conclusion that at this stage there was no evidence which disclosed the offence under Sections 397 and 398 of the Indian Penal Code. Perusing the papers, it clearly appears that no interference at all is required in the order passed by the learned Magistrate which is impugned in this Revision Application. The detailed discussion of the evidence is not required because the same is likely to prejudice the trial. However, the State will be at liberty to file the proper application for committal of the case on evidence for the graver offence if facts so disclose by the evidence during trial.

5. With these observations, this Revision Application fails and the same stands dismissed. Rule is

discharged.

(J.R. Vora, J.)
p.n.nair